AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1492

Introduced by Assembly Member Laird
(Coauthor: Assembly Member Berg)

February 21, 2003

An act to amend Section 51257 of, and to add Section 51282.1 to, the Government Code, relating to agricultural land conservation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1492, as amended, Laird. Agricultural land conservation.

The Williamson Act, until January 1, 2004, in order to facilitate a lot line adjustment, authorizes parties to mutually agree to rescind ~~the~~ *a* land conservation contract or contracts and simultaneously enter into a new contract or contracts covering the adjustment if the board of supervisors or city council makes specified findings.

This bill instead, until January 1, 2008, would prohibit a city or county from approving a lot line adjustment of land subject to a contract unless it makes similar but revised findings and would permit the parties to rescind the contract or contracts and simultaneously enter into a new contract or contracts of not less than 10 years if the board or council makes additional findings.

Existing law authorizes the cancellation of an agricultural land conservation contract upon request of the landowner if the board of supervisors or city council makes specified findings and *upon* the payment of a cancellation fee. Existing law also provides principles of compatibility by which a board or council may approve compatible uses on contracted lands.

This bill would provide that any nonagricultural ~~construction or land use~~ *commercial, industrial, or residential building constructed on a parcel subject to a contract that is not related to and not necessary for the long-term agricultural productivity of the parcel* not expressly authorized by the contract or by compatible use rules or ordinances ~~shall be presumed to be a~~ *is a material* breach of contract. This bill would require the *Department of Conservation to notify the* city or county administering the contract ~~to notify the Department of Conservation of the~~ *of a possible* breach. ~~If the department concurs in the determination that the use is incompatible, the~~ *The* bill would require the city or county *upon notification by the department, or upon its discovery of a possible breach to determine the validity of the contract and whether the breach is material. The bill would require the city or county to notify the department of its determination, to notify the contract holder of his or her right to request a hearing or to cure the breach and to schedule the hearing. The bill would require the city or county, upon the failure of the contract holder to respond or to cure the breach to assess a monetary penalty and* to cause to be recorded a certificate of contract termination by breach. The bill would also require the recording of a lien against the property, based on the value of the construction or improvements, that would be payable to the county treasurer as a penalty in lieu of contract cancellation fees. By imposing these duties on local government officers this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 51257 of the Government Code is amended to read:

51257. (a) ~~Notwithstanding any other provision of law~~ *In addition to the requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7)*, a city or county with jurisdiction over an agricultural preserve shall not approve a lot line adjustment that otherwise would be valid under the provisions of subdivision (d) of Section 66412, on land subject to a contract made pursuant to this chapter, unless the administering board or council finds all of the following based on substantial evidence in the record:

~~(1) The lot line adjustment will not result in the creation of more than one additional residence on the affected parcel or parcels.~~

~~(2) The lot line adjustment will not affect more than four legal parcels.~~

~~(3) The lot line adjustment does not use, validate, or require a boundary or other parcel demarcation derived from a government survey map where that boundary does not comply with the provisions of the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7).~~

~~(4)~~

(1) The landowner and the city or county have agreed to rescind the existing contract or contracts and enter into a new contract or contracts pursuant to this chapter and the new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.

(2) When the external boundaries of the land subject to a contract or contracts are proposed to be changed, both of the following:

(A) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.

(B) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.

(3) After the lot line adjustment, the parcels of land subject to contract will be large enough to sustain their agricultural use, as defined in Section 51222.

~~(5)~~

(4) The lot line adjustment would not compromise the long-term agricultural productivity of the parcel or other agricultural lands subject to a contract or contracts.

~~(6)~~

(5) The lot line adjustment is not likely to result in the removal of adjacent land from agricultural use.

~~(7)~~

(6) The lot line adjustment does not result in a greater number of developable parcels than existed prior to the adjustment, or an adjusted lot that is inconsistent with the general plan.

(7) The lot line adjustment will not affect more than the number of parcels permitted in subdivision (d) of Section 66412.

(8) The only lot lines that may be adjusted are those permitted or recognized under the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7).

(9) Any nonagricultural commercial, industrial, or residential building or buildings constructed on the parcel or parcels that continue to be subject to a contract made pursuant to this chapter are determined to be related to and necessary for the long-term agricultural productivity of the parcel or parcels.

(b) Nothing in this section shall limit the authority of the board or council to enact additional conditions or restrictions on lot line adjustments.

~~(c) To effectuate a lot line adjustment pursuant to this section and subdivision (d) of Section 66412, the parties shall mutually agree to rescind the contract or contracts and simultaneously enter into a new contract or contracts pursuant to this chapter, provided that the board or council finds all of the following:~~

~~(1) The new contract or contracts would enforceably restrict the adjusted boundaries of the parcel for an initial term for at least as long as the unexpired term of the rescinded contract or contracts, but for not less than 10 years.~~

~~(2) There is no net decrease in the amount of the acreage restricted. In cases where two parcels involved in a lot line~~

~~adjustment are both subject to contracts rescinded pursuant to this section, this finding will be satisfied if the aggregate acreage of the land restricted by the new contracts is at least as great as the aggregate acreage restricted by the rescinded contracts.~~

~~(3) At least 90 percent of the land under the former contract or contracts remains under the new contract or contracts.~~

~~(d)~~

(c) Only one new contract may be entered into pursuant to this section with respect to ~~an original parcel or contract, whichever encompasses the greater amount of land.~~ *a given parcel, prior to January 1, 2004.*

~~(e) Within 10~~

(d) Within 30 days of approving any lot line adjustment under this section, the board or council shall forward to the department a complete description of the action taken, including maps depicting previous and revised parcel configurations, contracts involved, findings made by the board or council, and any staff reports used in consideration of the adjustment.

~~(f)~~

(e) In the year 2006, the department's Williamson Act Status Report, prepared pursuant to Section 51207, shall include a review of the performance of this section.

~~(g)~~

(f) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2008, deletes or extends that date.

SEC. 2. Section 51282.1 is added to the Government Code, to read:

~~51282.1. (a) Notwithstanding any other provision of law, any nonagricultural construction or land improvements that are not expressly authorized by the contract or by compatible use rules or ordinances consistent with Section 51238.1, 51238.2, or 51238.3, shall be presumed to be a breach of contract.~~

~~(b) The city or county administering the contract shall immediately notify the Department of Conservation of the breach.~~

~~(c) If the department concurs in the determination that the use is incompatible, within 30 days of being notified by the department of its concurrence in the determination of the city or county, the city or county shall cause to be recorded a "certificate of contract~~

~~termination by breach,'' that shall affect only the land affected by the incompatible improvement or improvements.~~

~~(d) If the city or county has not received a determination of either concurrence or nonconcurrence within 45 days of notifying the department, the city or county shall cause to be recorded a certificate of contract termination by breach, that shall affect only the land affected by the incompatible improvement or improvements.~~

~~(e) Contract terminations pursuant to this section shall not be subject to the cancellation findings required under Section 51282.~~

~~(f)~~

51282.1. (a) For purposes of this section, a breach is material if a nonagricultural commercial, industrial, or residential building is constructed on the parcel subject to a contract that is not related to and not necessary for the long-term agricultural productivity of the parcel and is not expressly authorized by the contract or by compatible use rules or ordinances consistent with Section 51238.1, 51238.2, or 51238.3.

(b) The department shall notify the city or county if the department discovers a possible breach.

(c) The city or county shall, upon notification by the department or upon discovery by the city or county of a possible breach, determine if there is a valid contract and if the breach is material.

(d) The city or county shall notify the department of its determination regarding the breach and the reasons for that determination within 60 calendar days of the discovery of a possible breach. The notification shall include a copy of the contract.

(e) If the city or county determines there is a material breach of a contract, the city or county shall provide notice by certified mail to the contract holder or representative within 10 calendar days of notifying the department. Within 60 calendar days of receiving that notice, the contract holder or his or her representative shall have the right to request a hearing to contest the city's or county's determination that a material breach has occurred or to request 60 calendar days within which to cure the material breach.

(f) If the contract holder requests a hearing with the city or county, the city or county shall schedule a hearing with the

contract holder no more than 60 calendar days from receipt of the contract holder's request. The city or county shall notify the contract holder and the department of the date set for the hearing at least 30 days prior to the hearing. The city or county, with the concurrence of the department, may negotiate with the contract holder a monetary penalty that is not less than half of the amount specified in subdivision (h) and not more than the amount specified in subdivision (h). If the department decides not to attend the hearing, the city or county shall provide a recorded transcript of the proceedings to the department within 30 days after the hearing. If no agreement is reached pursuant to this subdivision, the contract holder may appeal the determination of material breach to the superior court.

(g) If the contract holder fails to respond to the city's or county's notice or fails to otherwise cure the material breach within 60 calendar days, the city or county shall assess a monetary penalty pursuant to subdivision (h) for material breach of the contract.

(h) (1) The monetary penalty for breach shall be an amount equal to 25 percent of the unrestricted fair market value of the land rendered incompatible by the breach, plus an amount equal to 25 percent of the value of the incompatible building and all related improvements on contracted land. The basis for valuation of the penalty shall be a determination by the county assessor of the current, unrestricted fair market value of the property that is subject to a contract and affected by the incompatible use or uses, and a valuation of any buildings and related improvements within the area affected by the incompatible use or uses.

(2) If the department disagrees with the assessor's valuation, the department may obtain an independent appraisal of the property by an appraiser qualified to undertake that valuation. If the department finds the independent appraisal more accurately represents the market value of the affected property or its improvements, it shall inform the city or county and landowner of that determination, and the appraisal shall serve as the basis for determining any penalties.

(3) Neither the assessor's valuation nor the department's appraisal, for purposes of penalty valuation under this section, shall be subject to appeal either pursuant to Section 51203 or to Section 1604 of the Revenue and Taxation Code.

(i) The certificate of contract termination by breach shall be accompanied by the recording of a lien, payable to the county treasurer. The amount of the lien shall be based upon the value of construction or improvements in breach of contract and shall be calculated at 25 percent of the unrestricted value of the land, as though it were free of contract restrictions, and 25 percent of the value of any construction or improvements together, which shall be payable to the treasurer of the county within which the property is located as a penalty in lieu of contract cancellation fees. ~~The penalty fee shall be calculated by the assessor pursuant to procedures set forth in subdivisions (a) and (b) of Section 51283. This calculation shall not be subject to appeal, either pursuant to Section 51203, or to Section 1604 of the Revenue and Taxation Code.~~

~~(g)~~

(j) Property owners, their agents, or the occupants of the property shall have the option of terminating the lien by either of the following:

(1) Payment of the penalty assessed pursuant to subdivision ~~(f)~~ *(i)* within 180 days of the filing of the lien.

(2) Returning the site to its prebreach status in order to avoid termination pursuant to this section with 30 days.

~~(h)~~

(k) If the lien is not terminated within 180 days, the use and occupancy of the improvements shall be prohibited.

~~(i)~~

(l) If the city or county fails to carry out its responsibilities pursuant to this article, the department may exercise any right or accept any responsibility for enforcement in place of the city or county.

(m) If the penalty is not paid within 60 days of the filing of the lien, simple interest shall accrue on the unpaid penalty at the rate ~~set for the Purchase Money Investment Account of the General Fund~~ *of 10 percent per year,* and shall continue to accrue until the penalty is paid by the property owner, agents or the occupants of the property, or out of escrow upon sale of the property, prior to all other claims except those with superior status under federal or state law.

~~(j)~~

(n) This provision shall not apply to improvements that ~~predated the inception of the contact~~ *are completed prior to January 1, 2004,* if those uses comply with the provisions of Section 51238.1.

~~(k)~~

(o) Within 30 days of receipt of any funds pursuant to this section, they shall be transmitted by the county treasurer to the Controller and deposited in the Soil Conservation Fund. The money in the fund is available, when appropriated by the Legislature, for the support of any of the programs of the Division of Land Resource Protection in the Department of Conservation.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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